



DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 15d

RIN 0503-AA52

Nondiscrimination in Programs or Activities Conducted by the United States Department of Agriculture

AGENCY: United States Department of Agriculture.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Department of Agriculture (USDA or Department) proposes to amend its regulation on nondiscrimination in programs or activities conducted by the Department. The changes are proposed to clarify the roles and responsibilities of USDA's Office of the Assistant Secretary for Civil Rights (OASCR) and USDA agencies in enforcing nondiscrimination in programs or activities conducted by the Department and to strengthen USDA's civil rights compliance and complaint processing activities to better protect the rights of USDA customers. OASCR's compliance activities are detailed, and a requirement is included that each agency shall, for civil rights compliance purposes, collect, maintain, and annually compile data on the race, ethnicity, and gender of all conducted program applicants and participants by county and State. Applicants and program participants will provide the race, ethnicity, and gender data on a voluntary basis. The proposed amendment also provides that OASCR shall offer Alternative Dispute Resolution (ADR) services to complainants where appropriate. This amendment is intended to encourage the early resolution of customer complaints. Finally, USDA proposes to amend its regulation to add protection from discrimination in programs or activities conducted by the Department with respect to two new

protected bases: political beliefs and gender identity. This amendment is meant to make explicit protections against discrimination based on USDA program customers' political beliefs or gender identity. Gender identity includes USDA program customers' gender expression, including how USDA program customers act, dress, perceive themselves, or otherwise express their gender.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. Submit comments on the Paperwork Reduction Act package on or before [INSERT DATE 60 days AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Submit comments on the proposed regulation to Anna G. Stroman, Chief, Policy Division, by mail at Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington DC, 20250. Please send written comments on the information collection or recordkeeping requirements included in this proposal to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), attention: Desk Officer for Agriculture, Washington, DC 20503.

Please state that your comments refer to Docket No. 0503-AA52. Please send a copy of your comments to: Docket No. 0503-AA52, Anna G. Stroman, Chief, Policy Division, by mail at the Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington DC, 20250. Comments on the Paperwork Reduction Act section are best assured of having their full effect if OMB receives them within 60 days of publication of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Anna Stroman on (202) 205-5953 or at anna.stroman@ascr.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The USDA proposes to amend its regulation on nondiscrimination in programs or activities conducted by the Department. In 1964, USDA extended the nondiscrimination principles found in Title VI of the Civil Rights Act of 1964 to apply to its own federally conducted activities by prohibiting discrimination on the basis of race, color, and national origin. (See 29 Federal Register (FR) 16966, creating 7 CFR part 15, subpart b, referring to nondiscrimination in direct USDA programs and activities, now found at 7 CFR part 15d). Subsequently, USDA expanded the protected bases for its conducted programs to include religion, sex, age, marital status, familial status, sexual orientation, disability, and whether any portion of a person's income is derived from public assistance programs. The Secretary's intention is to hold the Department and its employees accountable for a nondiscrimination standard equal to or greater than the standard recipients of Federal financial assistance must follow.

The regulation was last revised in 1999 (64 FR 66709, Nov 30, 1999). The changes are proposed to clarify the roles and responsibilities of OASCR and USDA agencies in enforcing nondiscrimination in programs or activities conducted by the Department ("conducted programs") and to strengthen USDA's civil rights compliance and complaint processing activities to better protect the rights of USDA customers. This regulation does not address those programs for which the Department provides Federal financial assistance¹ ("federally assisted programs"), which are covered under 7 CFR parts 15, 15a and 15b.

¹ Federally assisted programs are programs and activities receiving financial assistance through a third party such as a State or municipal government, university, or organization. Federally conducted programs, which are those programs covered in this regulation, are programs and activities receiving assistance directly from USDA.

HIGHLIGHTS OF CHANGES TO THE REGULATION

The proposed regulation outlines three specific changes to current activities. First, the proposed regulation includes a requirement that each agency shall, for civil rights compliance purposes, collect, maintain, and annually compile, by county and State, data on the race, ethnicity, and gender of all applicants and participants of programs and activities conducted by USDA. Applicants and program participants of these programs will provide this data on a voluntary basis. Although USDA first established a policy for collecting data on race, ethnicity, and gender in 1969, there is currently no uniform requirement for reporting and tabulating this data across USDA's diverse program areas. The four USDA agencies that administer the majority of USDA's conducted programs—the Farm Services Agency (FSA), the Natural Resources Conservation Service (NRCS), Rural Development (RD), and the Forest Service—already collect this data from individuals. FSA, NRCS, and RD (the “field-based agencies”) collect this data under the requirements of section 14006 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), which requires collection of this data for each program that serves agricultural producers and landowners. This data allows USDA to track application and participation rates for socially disadvantaged and limited resources applicants and participants. Together, these four agencies capture more than 90 percent of the contacts USDA has with the public through its conducted programs. This proposed regulation will standardize the recordkeeping requirement across the Department to all programs conducted by USDA that deliver benefits to the public.

Second, the rule would require that OASCR offer ADR services to complainants where appropriate. This amendment is intended to encourage the early resolution of customer

complaints and is in accordance with the Secretary of Agriculture's Blueprint for Stronger Service. Offering ADR will expand the use of techniques currently applied in the employment context that facilitate complaint resolution and shorten resolution time. It will provide a cost-effective opportunity for early complaint resolution. USDA anticipates that this measure will reduce costs associated with complaint processing while also enhancing customer experience with the Department.

Finally, USDA proposes to amend its regulation to add protection from discrimination in programs or activities conducted by the Department with respect to two new protected bases, political beliefs and gender identity. Discrimination by USDA employees on these grounds is already prohibited in USDA's nondiscrimination statement. This amendment is meant to formalize protections against discrimination based on USDA program customers' political beliefs or gender identity, which will strengthen USDA's ability to ensure that all USDA customers receive fair and consistent treatment, and align the regulations with USDA's civil rights goals. Gender identity includes USDA program customers' gender expression, including how USDA program customers act, dress, perceive themselves, or otherwise express their gender.

The inclusion of political beliefs will prohibit discrimination consistent with the Food Stamp Act of 1964, P.L. 88-525, 78 Stat. 703-709 (Aug. 31, 1964), the Civil Service Reform Act of 1978 (which covers political affiliation), and the Secretary of Agriculture's civil rights policy statements.

The inclusion of gender identity will ensure equal treatment of transgender and other gender nonconforming individuals in USDA's conducted programs and activities. For the

purpose of this regulation, gender identity includes USDA program customers' gender expression, including how USDA program customers act, dress, perceive themselves, or otherwise express their gender. The inclusion of gender identity as a separate category is not intended to undermine existing protections for transgender and other nonconforming individuals under laws that prohibit sex discrimination.

The change proposed will allow USDA customers of conducted programs who believe that they have been discriminated against on the basis of political beliefs or gender identity to take advantage of USDA's existing mechanisms to file an administrative complaint and receive a response. USDA's response could include recommending additional training for USDA employees or outreach in appropriate cases, procedures which already take place and can continue to take place within existing resources. The change proposed applies only to USDA's internal administrative complaint mechanism and does not, in and of itself, create any new legal rights to bring suit against USDA, or expand the class of cases where USDA is authorized to pay money in connection with civil rights complaints.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

The proposed rule has been determined to be significant for the purposes of Executive Order 12866 by the OMB. Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

The Regulatory Flexibility Act (RFA) requires agencies to consider the impact of their rules on small entities and to evaluate alternatives that would accomplish the same objectives without undue burden when the rules impose a significant economic impact on a substantial number of small entities.

Regulatory Impact Analysis – Benefits and Costs

The proposed changes to 7 CFR part 15d will clarify the roles and responsibilities of the United States Department of Agriculture’s (USDA) Office of the Assistant Secretary for Civil Rights (OASCR) and USDA agencies in enforcing nondiscrimination in programs or activities conducted by the Department. They will also strengthen USDA’s civil rights compliance and complaint processing activities to better protect the rights of USDA’s customers.

Impact of Changes

This regulation will afford several benefits. First, requiring the collection of data in a standardized fashion of applicants and participants of those programs in which USDA directly provides to the public services, benefits, or resources (i.e. conducted programs) will conform

with the requirements of the 2008 Farm Bill. Second, it will strengthen USDA's ability to monitor agency compliance with civil rights requirements. Third, the expansion of Alternative Dispute Resolution Services will enhance USDA's ability to resolve complaints against USDA conducted programs, and result in a small net annual savings to USDA. The expansion of protections against discrimination in the delivery of conducted programs will improve the protection of USDA customers' rights by ensuring that USDA conducted programs are delivered fairly and consistently.

These changes will impose a small, time-related cost on the public who are served by USDA's conducted programs through the data collection requirement, should they volunteer to provide the data. This data collection requirement will benefit USDA by enabling it to better monitor whether USDA programs and services are meeting the needs of all populations served by USDA. USDA does not anticipate that the proposed changes will otherwise significantly add to USDA's program costs.

The proposed changes do not affect programs administered by States, local governments, or other third-party recipients of Federal assistance from USDA, which are covered under 7 CFR parts 15, 15a and 15b. The benefits and costs of each of the three proposed changes to the rule are discussed below.

Collection of Voluntary Data on Race, Ethnicity, and Gender

The proposed rule requires that each USDA agency collect, maintain, and annually compile data on the race, ethnicity, and gender of all program applicants and participants of conducted programs by county and State. Program users' responses will be voluntary. This will create a standard collection of data on race, ethnicity, and gender from applicants and

beneficiaries of USDA-conducted programs. USDA anticipates that this expanded data collection will include additional data regarding customers who are and are not receiving USDA benefits, improve the design of USDA programs, and ultimately reduce the number of complaints of discrimination filed against USDA. While it is difficult to quantify the impact of these improvements in advance of implementation, improvements in outreach and monitoring adopted since 2009 led to a measurable drop in complaints received.

As described below, the proposed additional collection of voluntary data will impose a small new cost on the public in the form of time needed to complete the form. USDA estimates that the cost to the USDA agency to process the collection of the additional data on race, ethnicity, and gender proposed in the rule will be low. As previously described, the three field-based agencies and the Forest Service account for more than 90 percent of contacts with the public in USDA-conducted programs. However, these agencies are already collecting the data required under this rule, and USDA has already incurred the associated costs. Three additional USDA agencies currently have conducted programs that will be covered by the proposed rule, and the passage of this rule will require new data collection efforts. These three agencies are the Animal and Plant Health Inspection Service (APHIS), the Foreign Agricultural Service (FAS), and the Food and Nutrition Service (FNS). These three agencies will collect voluntary data from individuals who apply, participate in, or receive benefits from their various conducted programs. Collectively, collection of voluntary data at these three agencies will impact an estimated 1,349 additional program users per year. USDA estimates that it will take each participant 3 minutes to respond, and using a conservative 100-percent response rate, USDA estimates that the total new impact to the public from this requirement will be 68 additional burden hours to program users

(Table 1). For comparison, the existing collection requirements under FSA, NRCS, RD, and the Forest Service involve a burden of about 82,800 hours. Considering USDA agency costs, USDA estimates the total cost of the additional data collection to be \$5,289 (Table 2).

Table 1. Estimated Burden Hours to Public from New Data Collection Required by Proposed Rule

Agency	Contacts with Program Users per Year/1	Annual Burden Hours at 3 Min. per Form/2
APHIS	1,100	55
FAS	90	5
FNS	159	8
Total	1,349	68

Source:

1/Individual USDA Agency estimates of the number of program participants engaging in conducted programs

2/Annual burden hours are calculated based on the unit of time needed to complete the form: 3 min./60 min. = 0.05hours per form, which is multiplied by the number of agency program users.

Table 2. Estimated Public and Agency Cost of New Data Collection Required By Proposed Rule

Agency	Number of Contacts with Program Users per Year/1	Estimated Cost to Public in Time Required to Complete Form at \$0.84 per Contact/2	Cost to USDA to Collect and Report Data at \$3.08 per Contact/3	Total Costs
APHIS	1,100	\$924	\$3388	\$4312
FAS	90	\$76	\$277	\$353
FNS	159	\$134	\$490	\$624
Total/4	1,349	\$1,134	\$4,155	\$5,289

Sources:

1/Individual USDA Agency estimates of the number of program participants engaging in conducted programs.

2/Estimated cost to the public in the time required to complete the form is estimated based on the Department of Labor Occupation Employment Survey data, which shows that for all occupations, the median wage rate is \$16.71/hr. This rate equals \$0.28 per minute, or \$.84 per 3-minute contact. This figure is multiplied by the number of agency program users.

3/Estimated cost to process each form is based on the assumption that the data from one contact will take 10 minutes to process by an employee at a GS-7 Step 5 salary. The Office of Personnel Management states that this salary is \$18.45/hr. This rate equals \$0.308 per minute, or \$3.08 per 10-minute contact. This figure is multiplied by the number of agency program users.

Alternative Dispute Resolution Services Offered to Program Complainants

The proposed amendment provides that OASCR shall offer ADR services to complainants where appropriate. This amendment is intended to encourage the early resolution of customer complaints. The outcome from early resolution should improve customers' experience with the complaint process and result in reduced costs to complainants and the Department.

The proposed change to ADR will not impose or result in any costs to the public served by USDA's conducted programs. USDA anticipates that this expansion of ADR services to complainants of USDA's conducted programs will provide a small net yearly savings to USDA. USDA receives, on average, approximately 1,055² complaints from participants of all USDA programs per year; of these, 160 are under USDA's conducted programs and would be covered by this rule.

Even assuming an additional 160 program complaints per year through ADR, USDA has existing infrastructure to process these complaints. An average of 16.7 hours of staff time will be required to provide ADR in each case. Based on an hourly wage rate of \$46 per hour for this staff, OASCR estimates an annual estimated cost of program ADR of \$122,912.

Historically, the ADR rate of resolution for Equal Employment Opportunity cases is 16.5 percent. Should this rate be realized for program resolution, approximately 26 cases per year would be resolved through ADR. Complaints successfully resolved through ADR will allow the avoidance of several additional, costly steps currently required to resolve complaints, such as an

² Estimated complaints average based on data from FY 2009–2011. FY 2009–2011 Farm Bill Reports are posted on OASCR Web site.

Agency response, fact finding, investigation, adjudication, or review. OASCR estimates that avoiding these steps would save an average of 250 hours of staff time per complaint successfully resolved through ADR. Resolving 26 cases through ADR would save the agency approximately 6,500 hours in processing time. These savings amount to \$299,000, yielding net savings of about \$176,000 per year by implementing ADR for program complaints.

Adding Explicit Protections Against Discrimination Based on Political Beliefs and Gender Identity

Finally, USDA proposes to amend its regulation to add protection from discrimination in programs or activities conducted by the Department with respect to two new protected bases, political beliefs and gender identity. Discrimination by USDA employees on these grounds is already prohibited in USDA's nondiscrimination statement. Making these protections explicit in the governing regulations will benefit the public by strengthening USDA's ability to ensure that all USDA customers receive fair and consistent treatment, and will bring the regulations into alignment with USDA's nondiscrimination goals. The proposed change will impose no new costs on the public served by USDA-conducted programs, and USDA does not expect any significant increase in operational costs to USDA.

The change proposed will allow USDA customers of conducted programs who believe that they have been discriminated against based on their political beliefs or gender identity to take advantage of USDA's existing mechanisms to file an administrative complaint and receive a response. USDA's response could include recommending additional training for USDA employees or outreach in appropriate cases, procedures that already take place within existing resources. The change proposed applies only to USDA's internal administrative complaint mechanism and does not create any new legal rights to bring suit against USDA, or expand the

class of cases where USDA is authorized to pay money in connection with civil rights complaints. The inclusion of gender identity also is not intended to undermine existing protections against transgender discrimination under laws that prohibit sex discrimination.

USDA does not anticipate a significant increase in operational costs to result from specifying that discrimination based on political beliefs and gender identity may be the bases for complaints in conducted programs. Based on USDA's complaint inventory, and the experience of the Department of Housing and Urban Development (HUD) in adopting similar protections, USDA does not anticipate a significant increase in the number of complaints, and therefore the cost of processing these complaints, as a result of extending the requirement that USDA program customers are treated fairly and without bias. Any additional administrative costs to process these complaints will be offset by the benefits of extending these protections to USDA customers.

For additional context, in February 2012, HUD amended its regulations to extend protections against discrimination based on gender identity (see Fed. Reg. Vol. 77, No. 23 at 5662 *et seq.*). The public comment period for the HUD-proposed rule resulted in approximately 376 public comments received from a variety of commenters, including individuals, advocacy groups, legal aid offices, tenant and fair housing organizations, realtors and their representatives, law school clinics, public housing authorities, local government officials, and members of Congress. The overwhelming majority of comments were supportive of the rule, stating that it was long overdue and noting that HUD, as the Nation's housing agency, should lead the efforts to prevent discrimination against Lesbian, Gay, Bisexual, and Transgender persons in housing.

Moreover, HUD's rule has not created a significant increase in complaints received. USDA expects that its rule will be similarly received.

OASCR believes that the benefits of this rule exceed its cost, but OASCR invites comments on the analysis, and is interested in receiving further information that could be used to quantify further the benefits and costs of this proposed rule.

Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" that will "describe the impact of the proposed rule on small entities." (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

7 CFR part 15d clarifies the roles and responsibilities of the USDA OASCR and USDA agencies in enforcing nondiscrimination in programs or activities conducted by the Department. The proposed regulation was last revised in 1999 (64 FR 66709, Nov 30, 1999). The changes also strengthen USDA's civil rights compliance and complaint processing activities to better protect the rights of USDA customers. As stated previously, the proposed data collection is in line with the requirements of section 14006 of the 2008 Farm Bill. The inclusion of political beliefs as a protected basis will prohibit discrimination in accordance with current civil rights laws, the Food Stamp Act of 1964, P.L. 88-525, 78 Stat. 703-709 (Aug. 31, 1964) and the Civil Service Reform Act of 1978 (which covers political affiliation) and the Secretary of Agriculture's civil rights policy statements.

The proposed rule may affect entities such as grocery and related product merchant wholesalers, establishments that export their goods on their own account that fall into category 4244 of the North American Industry Classification System (NAICS). Merchant wholesale establishments typically maintain their own warehouse, where they receive and handle goods for their customers. Goods are generally sold without transformation but may include integral functions, such as sorting, packaging, labeling, and other marketing services.

For the purpose of this analysis and following the Small Business Administration (SBA) guidelines, the potentially affected entities are classified within the following industries: General Line Grocery Merchant Wholesalers (NAICS 424410); Packaged Frozen Food Merchant Wholesalers (NAICS 424420); Dairy Product (except Dried or Canned) Merchant Wholesalers (NAICS 424430); Poultry and Poultry Product Merchant Wholesalers (NAICS 424440); Confectionery Merchant Wholesalers (NAICS 424450); Fish and Seafood Merchant Wholesalers (NAICS 424460); Meat and Meat Product Merchant Wholesalers (NAICS 424470); Fresh Fruit and Vegetable Merchant Wholesalers (NAICS 424480); and Other Grocery and Related Products Merchant Wholesalers (NAICS 424490).

Establishments in the categories listed above are considered small by SBA standards if their employee base is less than 100 employees. According to the U.S. Census data, there are 46,272 grocery and related product merchant wholesalers that are considered small.

Based on USDA program data, it is expected that the proposed data collection requirements on those who apply, participate in, or receive benefits from various conducted programs may affect 90 participants who fall in the above cited categories. These are participants in FAS programs (Table 1). The remaining 1,259 contacts are private individuals.

USDA estimates that it will take each participant 3 minutes to respond. The race, ethnicity, and gender information will be voluntarily collected from individual applicants. Assuming an upper bound, 100-percent response rate of all 1,349 contacts, USDA estimates that the total new impact to the public from this requirement will be 68 additional burden hours per year at an estimated cost of about \$1,100 (Table 2), or less than \$1 per respondent should they choose to report.

The offer of ADR to program customers is not expected to have an adverse impact on small businesses. ADR will reduce the number of complaints filed, thereby reducing costs to the agency.

The inclusion of political beliefs and gender identity as protected bases is also not expected to have any adverse effect on small businesses. Instead, it will ensure that USDA is operating in accordance with the requirements of current civil rights laws and regulations and should not add additional costs to small businesses that are not participating in discriminatory activities or practices.

USDA considered the alternative of not updating its nondiscrimination regulations, however, without this rule, no additional assurances of nondiscrimination protections will be realized.

Based on the above discussion, the Assistant Secretary for Civil Rights certifies that this rule will not have a significant economic impact on a substantial number of small entities. USDA invites comment from members of the public who believe there will be a significant impact, and requests information to better inform the analysis of benefits and costs.

The 2008 Farm Bill, section 14006 requires the collection of application and participation rate data regarding socially disadvantaged farmers or ranchers. OMB has approved a form for this data collection, and the field-based agencies have already implemented it. This existing data collection already meets the requirements proposed in this rule, and therefore, the proposed rule imposes no new data collection requirements on the three field-based agencies and will not cause duplication or conflict with the 2008 Farm Bill requirements. USDA is unaware of any other Federal rules that duplicate, overlap, or conflict with the proposed rule.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs”, requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This rule neither provides Federal financial assistance nor direct Federal development. It does not provide either grants or cooperative agreements. Therefore, this program is not subject to Executive Order 12372.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, “Civil Justice Reform.” This rule would not preempt State and or local laws, and regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal governments.” The review reveals that this rule will not have substantial and direct effects on Tribal Governments and will not have significant Tribal implications. OASCR consulted with the USDA Office of Tribal Relations in development of this proposed rule and believes that it will not impact or have direct effects on Tribal governments and will not have significant Tribal implications. OASCR continues to consult with the USDA Office of Tribal Relations to collaborate meaningfully to develop and strengthen departmental regulations.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Publ. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any one year for State, local, or Tribal governments, in the aggregate, or to the private sector. The UMRA generally requires agencies to consider alternatives and adopt the more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandate as defined by Title II of UMRA for State, local, or Tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act of 1995

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to OMB. Please send written comments to the Office of Information and Regulatory Affairs, OMB, attention: Desk Officer for the Office of the Assistant Secretary for Civil Rights, Washington, DC 20503. Please state that your comments refer to Docket No. 0503-AA52. Please send a copy of your comments to: Docket No. 0503-AA52, Anna G. Stroman, Chief, Policy Division, by mail, at the Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington DC, 20250. Comments on the Paperwork Reduction Act section are best assured of having their full effect if OMB receives them within 60 days of publication of this proposed rule.

The proposed rule outlines USDA's compliance activities in greater detail, including a requirement that each agency shall, for civil rights compliance purposes, collect, maintain, and annually compile data on the race, ethnicity, and gender of all applicants and participants of programs and activities conducted by USDA, by county and State. This requirement would not apply to programs conducted by state or local governments or other private entities that receive Federal funding from USDA. While USDA agencies will be required to seek this data, program users' responses will be voluntary. USDA estimates that it will take program users who participate no more than 3 minutes to respond.

Four USDA agencies already collect and report this data; this regulation will not impact their existing data collections. The field-based agencies, FSA, NRCS, and RD, track participation rates for socially disadvantaged limited resources applicants and participants.

Collection by these three agencies is required by Section 14006 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). OMB has approved a form for data collection by the three field-based agencies, and USDA has already implemented collection efforts (Approved OMB No. 0503-0019). In addition, the Forest Service also has an OMB-approved form in place to collect this data through a survey (Approved OMB No. 0596-0110). The proposed regulation will standardize the recordkeeping requirement across the Department to all other programs conducted by USDA. FSA, NRCS, RD, and the Forest Service will continue to use the existing forms that OMB has approved for their data collections. Other program areas will adopt the form that has already been approved by OMB for the three field-based agencies, under control number OMB No. 0503-0019. Therefore, the provisions of this rule require no revision to the information collection requirements that were previously approved by OMB under control number 0503 0019.

There is no paperwork collection associated with the other changes in this rule.

USDA is soliciting comments from the public concerning the proposed information collection and recordkeeping requirements. These comments will help us:

- 1) Evaluate whether the proposed information collection is necessary for the proper performance of the agency's functions, including whether the information will have practical utility;
- 2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;
- 3) Enhance the quality, utility, and clarity of the information to be collected; and

4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Title of the Collection: 7 CFR part 15 subpart D - Data Collection Requirement

OMB Control Number: 0503-NEW

Estimate of burden hours: Public reporting burden for this collection of information is estimated to average 3 minutes per response.

Respondents: Applicant and program participants of USDA federally conducted programs.

Estimated annual number of Respondents: 1,349.

Estimated annual number of Responses per Respondent: 1.

Estimated annual number of Responses: 1,349.

Estimated total annual burden on Respondents: 68 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 405W, 1400 Independence Avenue, SW, Washington, DC 20250.

E-Government Act Compliance

OASCR is committed to complying with the E-Government Act, which requires Government Agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 7 CFR Part 15d

Civil rights, Equal employment opportunity, Grant programs-education, Individuals with disabilities.

For the reasons set forth in the preamble, USDA proposes to revise 7 CFR Part 15d to read as follows:

**PART 15d—NONDISCRIMINATION IN PROGRAMS OR ACTIVITIES CONDUCTED
BY THE UNITED STATES DEPARTMENT OF AGRICULTURE**

Sec.

15d.1 Purpose.

15d.2 Definitions.

15d.3 Discrimination prohibited.

15d.4 Compliance.

15d.5 Complaints.

Authority; 5 U.S.C. 301.

§ 15d.1 Purpose.

The purpose of this part is to set forth the nondiscrimination policy of the United States Department of Agriculture (USDA) in programs or activities conducted by the Department, including such programs and activities in which the Department or any agency thereof makes available any benefit directly to persons under such programs and activities.

§ 15d.2 Definitions.

For the purpose of this section, the below terms are defined as follows:

- (a) *Agency* means a major organizational unit of the Department with delegated authority to deliver programs, activities, benefits, and services. Heads of Agencies receive their delegated authority as prescribed in 7 CFR Part 2.
- (b) *Agency Head Assessment* means the annual Agency Civil Rights Performance Plan and Accomplishment Report conducted by the Office of the Assistant Secretary for Civil Rights (OASCR). It is an evaluation tool used by OASCR to assess USDA Agency

Heads and Staff Office Directors on their civil rights activities and accomplishments to ensure accountability throughout the Department on these issues.

- (c) *Alternative Dispute Resolution* or *ADR* means any number of conflict resolution procedures in which parties agree to use a third-party neutral to resolve complaints or issues in controversy. ADR methods include, but are not limited to, mediation, facilitation, fact finding, arbitration, use of ombuds, or any combination thereof.
- (d) *Assistant Secretary for Civil Rights* or *ASCR* means the civil rights officer for USDA responsible for the performance and oversight of all civil rights functions within USDA, and who retains the authority to delegate civil rights functions to heads of USDA agencies and offices. The ASCR is also responsible for evaluating agency heads on their performance of civil rights functions.
- (e) *Complaint* means a written statement that contains the complainant's name and address and describes an agency's alleged discriminatory action in sufficient detail to inform the ASCR of the nature and date of an alleged civil rights violation. The statement must be signed by the complainant(s) or someone authorized to sign on behalf of the complainant(s). To accommodate the needs of people with disabilities, special needs, or who have Limited English Proficiency, a complaint may be in an alternative format.
- (f) *Compliance report* means a written review of an agency's compliance with civil rights requirements, to be prepared by OASCR and to identify each finding of non-compliance or other civil rights-related issue. The review is conducted at the discretion of OASCR or if there has been a formal finding of non-compliance.

- (g) *Conducted programs and activities* means the program services, benefits, or resources delivered directly to the public by USDA.
- (h) *Days* mean calendar days, not business days.
- (i) *Department (used interchangeably with USDA)* means the Department of Agriculture and includes each of its operating agencies and other organizational units.
- (j) *Discrimination* means unlawful treatment or denial of benefits, services, rights, or privileges to a person or persons based on race, color, national origin, religion, sex (including gender identity), sexual orientation, disability, age, marital status, sexual orientation, familial status, parental status, income derived from a public assistance program, political beliefs, or gender identity.
- (k) *Secretary* means the Secretary of Agriculture or any officer or employee of the Department whom the Secretary has heretofore delegated, or whom the Secretary may hereafter delegate, the authority to act in his or her stead under the regulations in this part.

§ 15d.3 Discrimination prohibited.

- (a) No agency, officer, or employee of USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by USDA.
- (b) No person shall be subjected to reprisal for opposing any practice(s) prohibited by this part, for filing a complaint, or for participating in any other manner in a proceeding under this part.

§ 15d.4 Compliance.

(a) *Compliance program.* OASCR shall evaluate each agency's efforts to comply with this part and shall make recommendations for improving such efforts.

(1) OASCR shall oversee the compliance reviews and evaluations, and issue compliance reports that monitor compliance efforts to ensure that there is equitable and fair treatment in conducted programs.

(2) OASCR shall monitor all settlement agreements pertaining to program complaints for compliance to ensure full implementation and enforcement.

(3) OASCR shall oversee Agency Head Assessments to ensure that Agency Heads are in compliance with civil rights laws and regulations.

(4) OASCR shall monitor all findings of non-compliance to ensure that compliance is achieved.

(5) OASCR shall require agencies to collect the race, ethnicity, and gender of applicants and program participants, who choose to provide such information on a voluntary basis, in USDA-conducted programs, for purposes of civil rights compliance, oversight, and evaluation.

(b) *Agency data collection and compliance reports.* (1) Each Agency shall, for civil rights compliance, collect, maintain, and annually compile data on all program applicants and participants in conducted programs by county and State, including but not limited to, application and participation rate data regarding socially disadvantaged and limited resources applicants and participants. At a minimum, the data should include:

- (i) Numbers of applicants and participants by race, ethnicity, and gender, subject to appropriate privacy protections, as determined by the Secretary and in accordance with law; and
 - (ii) The application and participation rate, by race, ethnicity, and gender, as a percentage of the total participation rate.
- (2) Each Agency shall submit to OASCR timely, complete, and accurate program application and participation reports containing the information described in paragraph (b)(1) of this section, on an annual basis, and upon the request of OASCR independently of the annual requirement.
- (c) *Complaint reporting compliance.* OASCR shall ensure compliance with mandated complaint reporting requirements, such as those required by section 14006 of the Food, Conservation, and Energy Act of 2008 (PL 110-246).

§ 15d.5 Complaints.

- (a) Any person who believes that he or she (or any specific class of individuals) has been, or is being, subjected to practices prohibited by this part may file (or file through an authorized representative) a written complaint alleging such discrimination. The written complaint must be filed within 180 calendar days from the date the person knew or reasonably should have known of the alleged discrimination, unless the time is extended for good cause by ASCR or the designee. Any person who complains of discrimination under this part in any fashion shall be advised of the right to file a complaint as herein provided.

- (b) All complaints under this part should be filed with the Office of the Assistant Secretary for Civil Rights (ASCR), 1400 Independence Ave SW, U.S. Department of Agriculture, Washington, DC 20250, who will investigate the complaints. The ASCR will make final determinations as to the merits of complaints under this part and as to the corrective actions required to resolve program complaints. The complainant will be notified of the final determination on the complaint.
- (c) Any complaint filed under this part alleging discrimination on the basis of disability will be processed under 7 CFR part 15e.
- (d) For complaints OASCR deems appropriate for ADR, OASCR shall offer ADR services to complainants.

Krysta Harden
Deputy Secretary

December 19, 2013
DATE

[FR Doc. 2013-30812 Filed 12/26/2013 at 8:45 am; Publication Date:
12/27/2013]